2. *European Union law must be interpreted as meaning that Articles 167 and 168(a) of Directive 2006/112 and the principles of fiscal neutrality, legal certainty and equal treatment do not preclude the recipient of an invoice from being refused the right to deduct input value added tax because there is no actual taxable transaction even though, in the tax adjustment notice addressed to the issuer of that invoice, the value added tax declared by the latter was not adjusted. However, if, in the light of fraud or irregularities, committed by the issuer of the invoice or upstream of the transaction relied upon as the basis for the right of deduction, that transaction is considered not to have been actually carried out, it must be established, on the basis of objective factors and without requiring of the recipient of the invoice checks which are not his responsibility, that he knew or should have known that that transaction was connected with value added tax fraud, a matter which it is for the referring court to determine.*

([1]) OJ C 80, 17.3.2012.

Request for a preliminary ruling from the Krajský súd v Prešove (Slovakia) lodged on 6 November 2012 — Spoločenstvo vlastníkov bytov MYJAVA v Podtatranská vodárenská prevádzková spoločnosť, a.s.

(Case C-496/12)

(2013/C 86/10)

Language of the case: Slovak

Referring court

Krajský súd v Prešove

Parties to the main proceedings

Applicant: Spoločenstvo vlastníkov bytov MYJAVA

Defendant: Podtatranská vodárenská prevádzková spoločnosť, a.s.

Questions referred

1. Must the provisions of European Union directives such as Directive 1999/44/EC ([1]) of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees, Council Directive 85/374/EEC ([2]) of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products, and other directives intended for the protection of consumers, be interpreted as meaning that the same protection as for consumers is also afforded to a legal person, if *in contracts covered by those directives it acts for purposes which are not related to a trade or business?*

2. Must the provisions of European Union directives such as Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees and Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products be interpreted as meaning that a provision of national law, such as that at issue in the main proceedings, which when goods supplied are ascertained to be faulty limits a restitutionary claim such as a claim to recovery of the proceeds of unjust enrichment solely to the period *from the last reading of the water meter carried out before the submission of the request* is incompatible with them?

([1]) OJ 1999 L 171, p. 12.
([2]) OJ 1985 L 210, p. 29.

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio (Italy) lodged on 19 December 2012 — Loredana Napoli v Ministero della Giustizia — Dipartimento Amministrazione Penitenziaria

(Case C-595/12)

(2013/C 86/11)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Lazio

Parties to the main proceedings

Applicant: Loredana Napoli

Defendant: Ministero della Giustizia — Dipartimento Amministrazione Penitenziaria

Questions referred

1. Is Article 15 of Directive 2006/54/EC ([1]) (return from maternity leave) applicable to attendance of a professional training course in the context of an employment relationship and must it be interpreted as meaning that, at the end of the leave period, the female worker concerned has the right to be re-admitted to the same course still under way, or can it be interpreted as meaning that the female worker concerned may be enrolled on a subsequent course, even though the timing, at least, of that subsequent course is uncertain?

2. Must Article 2(2)(c) of Directive 2006/54/EC, which provides that any less favourable treatment related to maternity leave constitutes discrimination, be interpreted as affording female workers protection, which is absolute and cannot be affected by divergent interests, against any substantial inequality (Case C-136/95 *Thibault* [1998] ECR I-2011), so as to preclude national legislation which, by requiring dismissal from a professional training course and

at the same time guaranteeing the option of enrolling on the following course, pursues the objective of providing adequate training but deprives the female worker of the opportunity to take up, at an earlier date, a new post together with male colleagues from the competition and course, and thus to receive the corresponding pay?

3. Must Article 14(2) of Directive 2006/54/EC, under which a difference of treatment based on characteristics constituting a genuine occupational requirement does not amount to discrimination, be interpreted as permitting the Member State to delay access to employment to the detriment of a female worker who has been unable to undergo full professional training as a result of maternity leave?

4. In the scenario set out in [Question 3], and accepting, in abstract terms, that Article 14(2) is applicable to the case set out therein, must that provision none the less be interpreted, in accordance with the general principle of proportionality, as precluding national legislation which requires that a female worker absent on maternity leave be dismissed from the course rather than ensuring that parallel remedial courses be set up in order to allow the training shortfall to be remedied, thereby combining the rights of the working mother and the public interest, but with the organisational and financial costs attached to that option?

5. If it is interpreted as precluding the national legislation referred to above, does Directive 2006/54/EC set out, in that regard, self-executing rules which are directly applicable by the national court?

([1]) Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) (OJ 2006 L 204, p. 23).

Appeal brought on 19 December 2012 by Isdin, SA against the judgment of the General Court (Fourth Chamber) delivered on 9 October 2012 in Case T-366/11: Bial-Portela & C[a], SA v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-597/12 P)

(2013/C 86/12)

Language of the case: English

Parties

Appellant: Isdin, SA (represented by: H. L. Mosback, Advocate, G. Marín Raigal, P. López Ronda, G. Macias Bonilla, abogados)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Bial-Portela & C[a], SA

Form of order sought

The appellant claims that the Court should:

— annul the contested decision;

— confirm the decision of 6 April 2001 of the First Board of Appeal of OHIM dismissing the opposition in its entirety;

— order Bial-Portela & C[a], SA to pay the costs.

Pleas in law and main arguments

The appellant submits that there has been a distortion of the evidence by the General Court, since that Court stated, in paragraph 34 of the contested Judgement, that 'the Board of Appeal erred in finding that there is no phonetic similarity between the signs'. However, the Board of Appeal did not, as the General Court stated, err in finding that there was no phonetic similarity between the signs, but instead correctly analysed the phonetic similarity between the signs, and concluded that despite the phonetic similarities between the signs, the global sonority of the signs is different. This representation believes that the above conclusion of the Board of Appeal, which was distorted by the General Court, should be confirmed.

In addition, the appellant submits that there has been a distortion of the facts by the General Court since it stated, in paragraph 40 of the contested Judgement, that 'the goods in Class 3 and a large proportion of the goods in Class 5 (…) are normally marketed on display in supermarkets and therefore chosen by customers after a visual examination of their packaging'. This factual finding was not backed up by any evidence and thereby distorted the facts on which a decision should have been based. In addition, this fact was not put forward by any of the parties, and therefore could only be taken into consideration if it was well known (and given the arguments in support of the lack of plausibility of this fact, to consider it as such would amount in itself to a distortion of the facts). Therefore, this fact cannot be used as a basis for a finding of likelihood of confusion.

The appellant also submits that the principle of audi alteram partem enshrined in Article 76(1) CTMR ([1]) (former Article 74(1) of Regulation 40/94 ([2])) has been infringed and that the General Court erred in its application of Article 8(l)(b) CTMR and relevant case law, thereby infringing Union law. The General Court did not carry out an overall assessment of the marks at issue, taking into account all factors relevant to the circumstances of the present case.

([1]) Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark OJ L 78, p. 1

([2]) Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark OJ L 11, p. 1